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SUPREME COURT, U.S.
In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 385

STATE OF CALIFORNIA,

Petitioner,

vs.

HARRY TAYLOR, PETER A. CALUS,
JAMES W. BREWSTER, WILLIAM
J. LANGSTON, and H. C. GREER,

Respondents,

and

L. B. FEE, et al., etc. et al.,

Respondents.

AMICUS CURIAE BRIEF OF CALIFORNIA
STATE EMPLOYEES' ASSOCIATION IN
SUPPORT OF PETITIONER'S POSITION

PHILIP C. WILKINS,

818-19th Street
Sacramento 14, California

Attorney for California State
Employees' Association

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BRIEF AMICUS CURIAE

Now comes the California State Employees' Association, hereinafter called "Association," and files its brief amicus curiae in this matter, the written consent of all parties to the case having been filed concurrently with the filing of this brief.

tralize the handling and approval of these matters and break down the business-like handling of the State business as well as lowering of the morale of the State employees because of the discriminations that would arise as between employees in the various State departments.

CONCLUSION

Wherefore, it is respectfully submitted that this Honorable Court should determine and hold that the contract is null and void and of no effect, but that if it should hold that it is valid, that it should further determine and hold that it is null and void and of no effect in so far as any of its provisions conflict with the laws, rules and regulations of the State of California and of the Personnel Board of the State of California.

Respectfully submitted.

Dated:

PHILIP C. WILKINS,
Attorney for California State
Employees' Association

THE CALIFORNIA STATE EMPLOYEES' ASSOCIATION

The association is a voluntary association of all the employees of the State of California. There are approximately 132 chapters in the State of California. It was organized February 23, 1931 and the chapter representing the employees of the Board of State Harbor Commissioners, hereinafter referred to as "Board" is Chapter No. 1.

The objectives of the association are set forth in Article I of its constitution:

"The California State Employees' Association is hereby constituted and established in order to foster acquaintanceship, cooperation, efficiency and harmony among State employees and to develop a fuller knowledge among them of the State's organization, functions and activities;

"to encourage and preserve a true merit system in State government;

"to promote the welfare of State employees in all ways compatible with the public interest, including the support of legislation deemed beneficial and resistance to legislation deemed detrimental to their interests;

"to encourage the maintenance of high standards of employee-conduct in governmental affairs;

"to advocate and defend a just and efficacious administration of laws;

"to aid in the improvement of government and in the development of the State's resources and the advancement of the State's economy;

"to inspire and maintain in the hearts of its members a constant dedication to the principles of constitutional democracy as exemplified in our American form of government;

"and in all ways to render the most effective service to the people of the United States of America and of the State of California."

The chapter is the association's basic organizational unit. Its function is approximately equivalent to that of a "local" in a craft union. In size, chapters range from approximately 50 to over 7,000 members. The association's total membership was 59,142 on December 21, 1956. This is approximately 85% of those eligible. Membership is completely voluntary.

The association's activities are guided by a General Council which is composed of representatives elected by the members of each chapter on the basis of one delegate for each 100 members. The General Council meets annually and, by resolution, directs the scope of activities for the next year. A Board of Directors composed of the Association's officers and 19 regional directors is the interim policy body. It also directs the activities of Headquarters Office—the full-time paid staff of the Association.

The democratic process is an integral part of the operations of the association. Maximum responsiveness to the needs of California's employees is assured by the type of organization adopted.

It is by many times the largest organization of employees in the State of California, representing the

5) The contract is not valid because it was not and has not been approved by the Department of Finance of the State of California.

6) That the provisions of the contract which are in conflict with the provisions of the State Constitution and the State Civil Service Act are not binding upon the Harbor Board and the employees.

7) That the State Harbor Commissioners did not possess the power and authority to establish working conditions for the Civil Service employees of the Belt Railroad through a collective bargaining agreement with the Railroad Brotherhoods.

8) The status of the State employees working on the Railroad are to be governed by the State Civil Service laws and regulations of the State of California and not those of the contract.

THE CHARACTERISTICS OF THE CALIFORNIA CIVIL SERVICE SYSTEM

A constitutional provision (Const., Calif. Art. XXIV) providing the basis for a merit system for the employees of the State of California was adopted by vote of the people in November, 1934. In 1937, a State Civil Service Act was adopted. (Chap. 753 Statutes of 1937. Later codified in Calif. Govt. Code, Title 2, Division 5, Parts 1 and 2.) This act provides a comprehensive and flexible personnel system for employees of the State, including those on the Belt Railroad.

Since the establishment of constitutional civil service, a number of attempts have been made to weaken the system. Each attempted weakening has been re-

jected by the people. Legislative changes have been directed to improving the system by adoption of currently accepted personnel practices. Among the more important characteristics of the system are: (a) Appointment and promotion based on merit, efficiency and fitness as ascertained by competitive examination, (Const. Calif. Article XXIV, Sec. 1); (b) Salaries comparable to those generally prevailing. (Calif. Govt. Code 18850 et seq.) (c) A minimum of 15 working days of vacation each year (Calif. Govt. Code 18050 et seq.) (d) Unlimited accumulation of sick leave at the rate of 12 days a year (Calif. Govt. Code 18100, et seq.) (e) Dismissal only for cause and with the right of appeal (Calif. Govt. Code 19500, et seq.) (f) A systematic classification plan which provides the basis of an objective personnel system. (Calif. Govt. Code 18800, et seq.)

**THE STATE BELT RAILROAD IS ONLY ONE OF
SEVERAL FUNCTIONS OF THE OPERATION OF THE
PORT OF SAN FRANCISCO**

The Board of State Harbor Commissioners is responsible for the operation of the Port of San Francisco. Its functions include: Construction and operation of piers, and wharves, and dependent facilities; berthing of ships; maintenance of the channel; operation of the Foreign Trade Zone; policing of the waterfront; and operation of the State Belt Railroad.

Thus, the Railroad is but a supplementary, but necessary, part of the activity carried on. In total, the Board of State Harbor Commissioners employs ap—

proximately 495 persons, of whom 93 operate the Railroad.

**ALL EMPLOYEES OF THE HARBOR BOARD, INCLUDING THOSE
OF THE BELT RAILROAD ARE EMPLOYED UNDER THE CIVIL
SERVICE LAWS AND REGULATIONS OF THE
STATE OF CALIFORNIA**

Since 1951 the Harbor Board has operated solely under the State Civil Service laws and regulations and not under the contract. Prior to the decision of State of California vs. Brotherhood of Railroad Trainmen, 37 Cal. (2d) 412, 232 Pac. (2d) 857, the employees of the Harbor Board worked in the incongruous situation of having part of them working under conditions established by the contract and all others under laws, rules and regulations governed by the State Civil Service Act. Such a situation is certain to result in disharmony among the employees, a lowering of morale, and a possible loss of efficiency in the operation of the Port.

**STATE CIVIL SERVICE PROVISIONS ARE MORE ADVANTAGE-
OUS TO STATE BELT RAILROAD EMPLOYEES THAN THOSE
IN THE CONTRACT**

Under the Civil Service Act, employees of the Railroad have many advantages which their counterparts on other railroads do not enjoy.

From the employees' standpoint, pay is the most important part of the employment relationship. Under the Civil Service System now in effect, State employees in the classes involved here are paid at the same rate as employees on privately operated railroads but with more certain and steady employment. After two years of service, State employees are paid at a rate of ten

cents an hour higher than their counterparts in private employment (Calif. Govt. Code 18853, 18854; Calif. Admin. Code, Title 2, Sec. 111).

Adjustments in state rates for Civil Service employees are made regularly—as soon as they are made known to the State Personnel Board. They are made retroactive to the date of the change in private industry for hourly and per diem employees.

The rate provisions covering showup time, lay-off time, hazard and shift differentials for State Civil Service employees are the same as those specified in the contract. Therefore the contract gives Civil Service employees no advantage in these respects.

Appointment and promotion in the State Civil Service is based solely on merit, efficiency and fitness as ascertained by competitive examination — (Calif. Const. Art. XXIV) not solely on the basis of seniority as provided in the contract. The Civil Service provision is an incentive to the employee and promotes the public interest by promotion of those best qualified.

California Civil Service employees are entitled to 12 days of sick leave each year. There is no limit on the amount which can be accumulated (Calif. Govt. Code 18100, et seq.) The contract limits accumulation to 100 days.

Under Civil Service, layoffs are made in accordance with efficiency and seniority. (Calif. Govt. Code 19530, et seq.) The contract provides for seniority alone.

The Civil Service Act regulates dismissal, demotion and suspension. (Calif. Govt. Code 19570 et seq.) It provides for notice and hearing. There is an appeal

to the Personnel Board. There is review in the state courts. The contract provides for a complex procedure which might ultimately require appearances in the eastern part of the United States and a long distance from the employee's place of employment.

These and other provisions of the contract work to the extreme disadvantage of the employees of the Railroad. In almost every phase of employment conditions, the Civil Service Act is superior from the standpoint of the employee. Imposition of a system of collective bargaining under the Railway Labor Act nets the employees nothing of substantial value.

THE CONTRACT DISCRIMINATES AGAINST BELT RAILROAD EMPLOYEES

The rates of pay are set forth in Article 1 of said contract and are the only rates legally in effect at the present time. However, the rates were fixed when the contract was approved September 1, 1942. It is common knowledge that the rates of pay for these positions and all other work has substantially increased since 1942 due to the war, yet the contract rates of pay still stand as provided in Article 1 of said contract. They have not been changed in any way under the provisions of Article 28 of the contract. Had the civil service rules and regulations of the State of California been applicable to their employment the employees would be legally receiving a higher pay in accordance with the rates of pay established by the State Personnel Board and approved by the Department of Finance instead of rates of pay established by the Agreement.

Any payments of wages in excess of those provided in Article 1 of the contract that may have been made were and are illegal and the officials of the Harbor Board or employees of the Harbor Board responsible for paying rates of pay in excess of those provided in the contract are legally obligated to reimburse the State of California for such excess payments and the State of California is legally obligated to collect back from employees any excess payments so made.

According to the contract promotions shall be on the basis of seniority only regardless of ability or performance (Article 13). In the State Civil Service promotions are based on merit and ability. Under the State Civil Service an employee with ability and who has rendered meritorious service is given an opportunity to advance over someone who does not have equal ability and merit but who has worked for the State for a longer period of time. (State Constitution, Article XXIV, Section 1.) This lack of opportunity in the contract to advance by merit and ability is discriminatory and likewise deprives the State of the opportunity to promote the best-qualified people in the public interest.

In Section 2, of Article 14 of the contract a helper must decline promotion in accordance with Section 3b of Rule 7 of the Rules and Regulations of the State Personnel Board. There is no such subsection and rule in the rules of the Personnel Board at the present time.

Section 3a of Article 14 of the contract provides that firemen "shall be promoted to positions as engineers in accordance with Section 112 of the Civil

Service Act." There is at present no section of the Civil Service Act numbered 112. However, the contract requires the promotion to be made in accordance with the section as it existed in the law at the time the contract was entered into. It is difficult to correlate and reconcile the procedure of that section with other provisions of the contract. Nowhere does the contract provide for civil service examinations either for original appointment to the job or for promotions in them, yet Section 112 deals with appointments as the result of examinations. The uncertainty caused by this provision of the contract makes it administratively difficult to make promotions because of it and therefore makes employees' rights and benefits under the section ambiguous and uncertain and jeopardizes their opportunity for promotion.

Article 17 of the contract makes provision for presentation of grievances and in said section attempts to make provision for an appeal to the State Personnel Board but does not make any provision for the handling of such appeals by the State Personnel Board nor is there any legal provision giving the State Personnel Board jurisdiction to handle such appeals even if the contract supersedes State laws and civil service regulations. The provision is therefore meaningless and leaves the employees without adequate appeal protection. This is a further illustration of why the contract should first have been approved by the State Personnel Board.

Article 20 of the contract provides for a leave of absence. Its provisions are much more restrictive than

leaves of absences under the Personnel Board rules. (Government Code Sections 19330-19332, Personnel Board Rules 361-369.)

Article 23 of the Agreement provides the procedure when an employee is disciplined. If the employee appeals from discipline he may ultimately have to take it up with the National Railway Board located somewhere in the eastern United States and a long distance from his place of employment. This puts him at a disadvantage in handling it, whereas under the State Civil Service Act he could have the matter handled expeditiously very close at hand and with well-established rules and procedures for doing so. (Calif. Government Code, Sections 19570-19635.)

Article 25 of the contract provides the employee rights under the contract for sick leave with pay. Under Section 2 of the contract the employee can accumulate a total not to exceed 100 working days of sick leave. Under the Civil Service Act an employee can accumulate sick leave without limit. (Calif. Gov. Code, Section 18101.) As a result of this provision in the contract the Belt Railroad employees are deprived of a substantial right to accumulate sick leave which other State Employees have.

**RAILWAY LABOR ACT PROVISIONS CANNOT SUPERSEDE
STATE LAWS REGULATING STATE EMPLOYEES' SALARIES
AND WORKING CONDITIONS**

Under all the circumstances, it is obvious that application of the collective bargaining requirements of the Railway Labor Act to state employment would

constitute an unprecedented interference with a state's traditional method of fixing the working conditions of its employees, and it seems doubtful that Congress had such an intent. As stated in *Parker v. Brown*, 317 U.S. 341, 351, 63 S. Ct. 307, 313, "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." (*State of California vs. Brotherhood of Railroad Trainmen*, 37 Cal. (2d) 412, 232 Pac. (2d) 857.)

TO BE VALID AND BINDING THE PROVISIONS OF THE CONTRACT MUST BE SUCH THAT MEETS WITH THE APPROVAL OF THE DEPARTMENT OF FINANCE AND THE STATE PERSONNEL BOARD

Section 18004 of the Calif. Govt. Code provides as follows: "Unless the Legislature specifically provides that approval of the Department of Finance is not required, whenever any state agency or court fixes the salary or compensation of an employee or officer, which salary is payable in whole or in part out of state funds, the salary is subject to the approval of the Department of Finance before it becomes effective and payable."

Inasmuch as the salary of the employees of the Harbor Board are payable out of State funds the salaries paid to the employees of the Harbor Board are by law subject to the approval of the Department of Finance before they can become effective and payable. Since the contract in Article 1 thereof establishes rates of

pay the agency established by law, namely the Department of Finance, must first approve the rates of pay on behalf of the State of California before they can become effective. It being clear that the Department of Finance did not approve the rates of pay the Harbor Commission exceeded its authority and jurisdiction in approving them thus making the contract void and of no effect from the beginning.

In other matters affecting the employment rights and benefits of State employees such as sick leave, vacation, seniority, layoff, dismissals, etc. the Legislature in adopting the Civil Service Act has provided that the State Personnel Board shall be the agency to handle the approval of them.

If each Department of State government was entitled to act by itself and make private contracts with the employees under its jurisdiction dealing with salaries and other working conditions and benefits we would have chaos in State government because we would have a hodge podge of working rights, benefits, conditions, wages and salaries under the single employer, the State of California. Such procedure could not be considered sound, wise and business-like public administration. It is therefore with wisdom that the Legislature of the State of California has centralized the approving and handling of these matters for all State agencies in the Personnel Board for certain purposes and the Department of Finance for others. The judgment in this case that each Department can bargain independently with its employees in connection with salaries, working conditions, etc. would decen-